IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 5352 OF 2007

Raghunath Jagu Gavade.... Petitioner

versus

Baban Narayan Gavade & ors..... Respondent.

Shri R.D.Suryawanshi i/b Rahul S. Kate for the petitioner.
Shri S.S.Kulkarni for Respondent no.1.

CORAM; A.P. DESHPANDE, J.
DATED; 07TH SEPTEMBER, 2007

P.C.;

1. The respondent instituted a suit for possession against the present petitioner in the year 1997. Written statement was filed on 11-9-1998. Thereafter the present petitioner did not participate in the proceedings before the trial court and hence an ex-parte decree came to be passed on 4-3-2004.

2. It is the case of the petitioner that when he received notice in execution proceeding on 19-7-2006, he realised that the suit has been proceeded ex-parte and decreed. Hence the petitioner after obtaining certified copy of the judgment and decree, filed an appeal. As there was delay in filing of the appeal, an application for condonation of delay was filed and the rejection of the said application by the first

appellate court has given raise to the filing of this writ petition. The reason assigned for delay was that the advocate of the petitioner had instructed him not to attend the case but as and when his presence would be required, the advocate would intimate the petitioner and then only the petitioner should contact him. It is then submitted that the advovcate or his clerk never informed the fact of ex-parte decree being passed against the petitioner and hence the delay be condoned.

3. The first appellate court has found that in the first place, the petitioner does not appear to be deligent in the matter. The court has observed that even after receiving the certified copy of the judgment and decree, the appeal has not been filed within the limitation. The court has also found the explanation given by the petitioner for the delay, to be not sufficient to condone the delay. The First Appellate Court has held that to substantiate the ground raised for condonation of delay, the petitioner could have filed atleast an affidavit of his advocate or the clerk. Taking over all view of the matter the application has been rejected.

4. Perused the impugned order. The same takes a possible view and hence no interference in writ

jurisdiction is called for. The Writ Petition is summarily dismissed.

....